

Notice of Allowability

Application No.

10/060,506

Applicant(s)

CHOI ET AL.

Examiner

Juliet C. Switzer

Art Unit

1634

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to application and prelim amendment filed 1/30/02; and interview 5/7/03.
2. ☒ The allowed claim(s) is/are 22-26.
3. ☒ The drawings filed on 30 January 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
* Certified copies not received: _____.
5. ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
(a) ☐ The translation of the foreign language provisional application has been received.
6. ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application. **THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

7. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
8. ☐ CORRECTED DRAWINGS must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No. _____.
(b) ☐ including changes required by the proposed drawing correction filed _____, which has been approved by the Examiner.
(c) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No. _____.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet.

9. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|--|---|
| 1 <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 2 <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3 <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 4 <input checked="" type="checkbox"/> Interview Summary (PTO-413), Paper No. _____ |
| 5 <input type="checkbox"/> Information Disclosure Statements (PTO-1449), Paper No. _____ | 6 <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 7 <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit of Biological Material | 8 <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9 <input type="checkbox"/> Other |

EXAMINER'S AMENDMENT

EXAMINER'S AMENDMENT

1. The clean copy of the claims filed 1/30/02 had two claims numbered 23. In accordance with rule 1.126, the claims have been renumbered, and claims 22-26 are now pending.
2. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Patrick Higgins on 5/12/03.

The application has been amended as follows:

- A. In the amendment to the specification (amendment A2) filed 1/30/02, the related application data was updated to delete the language "currently pending" and to insert the language ----now US Patent 6465630---.
- B. Claims 23-26 were amended to depend from claim 22.
- C. In the preamble of claim 22, the language "pelargonidin derivatives" was deleted and the language ---leucopelargonidin compared to wild type plants--- was inserted therefor.
- D. In step (i) of claim 22, the language "according to" was deleted and the word ---comprising--- was inserted therefor.

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- E. In step (ii) of claim 22, the language ---of the encoded polypeptide--- was inserted after the language "position 134."

The following is an examiner's statement of reasons for allowance:

3. The prior art provides a nucleic acid encoding a dihydroflavanol 4-reductase (DFR) from Gerbera (*Helariutta et al.*). However, the prior art does not teach or suggest that a mutation of the coding sequence so that the encoded polypeptide has a Leu at position 134 will result in a DFR that selectively catalyzes the reduction of dihydrokaempferol to leucopelargonidin in the presence of dihydroquercetin and dihydromyricetin. Furthermore, the prior art does not teach or suggest a method of making transgenic plant comprising the nucleic acid encoding the modified DFR, nor does the prior art teach or suggest the effects that transformation of a plant with such a nucleic acid will have on the pigment production in transformed plants. Thus, the allowed claims are free of the prior art.


Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Juliet C. Switzer whose telephone number is (703) 306-5824. The examiner can normally be reached on Monday through Friday, from 9:00 AM until 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, W. Gary Jones can be reached on (703) 308-1152. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 and (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.



JEFFREY FREDMAN
PRIMARY EXAMINER



Juliet C Switzer
Examiner
Art Unit 1634

May 13, 2003